

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

POLLIN PATENT LICENSING, LLC; and
AUTOSCRIBE CORPORATION,

Plaintiffs,

v.

BB&T CORPORATION; BRANCH
BANKING AND TRUST COMPANY; and
BB&T FINANCIAL, FSB,

Defendants.

Case No. 1:11-CV-296

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Pollin Patent Licensing, LLC and Autoscribe Corporation complain of Defendants BB&T Corporation, Branch Banking and Trust Company and BB&T Financial, FSB, as follows:

1. This is a claim for patent infringement that arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

2. Pollin Patent Licensing, LLC ("PPL") is a Florida limited liability company with a business address of 9801 Washingtonian Boulevard, Suite 200, Gaithersburg, Maryland 20878.

3. Autoscribe Corporation ("Autoscribe") is a Maryland corporation with a principal place of business at 9801 Washingtonian Boulevard, Suite 200, Gaithersburg, Maryland 20878.

4. On October 3, 2006, the United States Patent and Trademark Office granted U.S. Patent No. 7,117,171 (the "'171 patent") from an application filed on October 15, 1992, entitled "System and Method for Making a Payment from a Financial Account" and naming Robert Pollin as the inventor.

5. Autoscribe is the owner by assignment of all legal rights, title, and interest in and to the '171 patent.

6. PPL is an exclusive licensee to rights in the '171 patent.

7. Among other activities, Autoscribe specializes in various forms of electronic payment solutions, including software and services for payment capture, risk management, ACH processing and check by phone (see, e.g., www.paymentvision.com). Among other things, PPL is responsible for the licensing of the '171 patent.

8. Autoscribe and PPL have standing to sue for infringement of the '171 patent because they collectively own all right, title and interest in and to the '171 patent and the Autoscribe processes and products covered by that patent, including the right to collect for past damages. Autoscribe and PPL have each suffered injury from the Defendants' acts of patent infringement.

9. Upon information and belief, BB&T Corporation ("BB&T") is a North Carolina corporation with a headquarters in Winston-Salem, North Carolina and having a registered agent at CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, North Carolina 27601. Upon information and belief, BB&T provides, among other things, banking products and services to customers throughout the United States, including North Carolina and this judicial district, in branches, online and over the telephone, including mortgage services through its subsidiary Branch Banking and Trust Company and credit card services through its subsidiary BB&T Financial, FSB.

10. Upon information and belief, Branch Banking and Trust Company ("Branch Banking") is a commercial bank chartered to do business throughout the United States, as well as a North Carolina corporation with a headquarters in Winston-Salem, North Carolina, having a registered agent at CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, North

Carolina 27601. Upon information and belief, Branch Banking has branches throughout the United States, including in North Carolina and this judicial district, and provides a range of banking products and services, including consumer loans, through its branches, online and over the telephone. Also upon information and belief, Branch Banking is a wholly owned subsidiary of BB&T.

11. Upon information and belief, BB&T Financial, FSB ("BB&T Financial") is a savings association which is chartered to do business throughout the United States, including North Carolina and this judicial district, having a business address at 4 Bradley Park Court, Suite 1C, Columbus, Georgia 31904. Upon information and belief, BB&T Financial is a wholly owned subsidiary of BB&T and conducts many of its operations under the BB&T name. Also upon information and belief, BB&T Financial provides, among other things, credit card services to customers throughout the United States, including North Carolina and this judicial district, in branches of BB&T subsidiary Branch Banking, online and over the telephone.

12. Upon information and belief, BB&T, Branch Banking and BB&T Financial conduct credit card and/or loan business and provide payment processing services in North Carolina and this judicial district through local branches, the internet and by telephone, such as through call centers located in this judicial district and elsewhere. Also upon information and belief, BB&T, Branch Banking and/or BB&T Financial owns, operates, controls, directs the activities of and/or collects funds through call centers, including call centers in Greenville, Lumberton, Whiteville, Wilmington and Wilson, North Carolina, through which debt is collected using a telephone.

13. Upon information and belief, BB&T, Branch Banking and/or BB&T Financial may use a payment system called PaymentXChange™ Telephone Payment and Authorization system, offered by Creative Payment Solutions, Inc. ("CPS"), a North Carolina corporation with

headquarters in Wilson, NC, for at least a portion of their check by phone payment processing. Also upon information and belief, CPS is a wholly owned subsidiary of BB&T which provides payment processing services to financial institutions and merchants.

14. Accordingly, upon information and belief, and as set forth above, this Court has personal jurisdiction over BB&T, Branch Banking and BB&T Financial because, among other things, they transact substantial business in North Carolina and this judicial district, including the collection of debt from a debtor's checking account through the use of telephones located in this judicial district and from residents of North Carolina and this judicial district.

15. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

16. BB&T has infringed and continues to infringe the '171 patent by, among other activities, making, using and/or conducting business through its call centers to collect debt throughout the United States, including within this judicial district, in a manner which is covered by at least claims 6 and 12 of the '171 patent. Alternatively, BB&T will have also infringed the '171 patent with actual notice of infringement through correspondence from Autoscribe in early 2011 as well as the filing of this Complaint, by knowingly and actively inducing others to infringe and by contributing to the infringement of others by making, using and/or conducting check by phone business through its call centers.

17. Branch Banking has infringed and continues to infringe the '171 patent by, among other activities, making, using and/or conducting business through its call centers to collect debt throughout the United States, including within this judicial district, in a manner which is covered by at least claims 6 and 12 of the '171 patent. Alternatively, Branch Banking will have also infringed the '171 patent with actual notice of infringement through correspondence from Autoscribe in early 2011 as well as the filing of this Complaint, by knowingly and actively

inducing others to infringe and by contributing to the infringement of others by making, using and/or conducting check by phone business through its call centers.

18. BB&T Financial has infringed and continues to infringe the '171 patent by, among other activities, making, using and/or conducting business through its call centers to collect debt throughout the United States, including within this judicial district, in a manner which is covered by at least claims 6 and 12 of the '171 patent. Alternatively, BB&T Financial will have also infringed the '171 patent with actual notice of infringement through correspondence from Autoscribe in early 2011 as well as the filing of this Complaint, by knowingly and actively inducing others to infringe and by contributing to the infringement of others by making, using and/or conducting check by phone business through its call centers.

19. Autoscribe and PPL have complied with the provisions of 35 U.S.C. § 287.

20. Each Defendant's infringement, contributory infringement and/or inducement to infringe has injured Plaintiffs and Plaintiffs are entitled to recover damages adequate to compensate them for such infringement, but in no event less than a reasonable royalty.

21. Each Defendant's infringing activities have caused irreparable harm to Plaintiffs, which have no adequate remedy at law, and will continue to injure Plaintiffs, unless and until this Court enters an injunction prohibiting each Defendant from further infringement, contributing to and/or inducing infringement of the '171 patent.

Prayer for Relief

WHEREFORE, Autoscribe and PPL respectfully ask this Court to enter judgment against each of Defendants, BB&T, Branch Banking and BB&T Financial, as well as their respective subsidiaries, successors, parents, affiliates, officers, directors, agents, servants and employees, and all persons in active concert or participation with them, granting the following relief:

A. The entry of judgment in favor of Plaintiffs and against each Defendant;

- B. An award of damages adequate to compensate Plaintiffs for the infringement that has occurred, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- C. A permanent injunction prohibiting further infringement, inducement and/or contributory infringement of the '171 patent;
- D. Increased damages and/or attorneys' fees as permitted under 35 U.S.C. § 284 and § 285;
- E. Such other relief that Plaintiffs are entitled to under law, and any other and further relief that this Court or a jury may deem just and proper.

Jury Demand

Plaintiffs demand a trial by jury of all issues properly triable to a jury.

Respectfully submitted,

/s/ Brady J. Fulton
Brady J. Fulton
NORTHUP, MCCONNELL & SIZEMORE, PLLC
123 Biltmore Avenue
Asheville, NC 28801
(828) 232-4481
Fax: (828) 232-4489
bjf@northupmcconnell.com

Pro Hac Vice Motions to be Filed on Behalf of:

Raymond P. Niro
Robert A. Vitale, Jr.
Patrick F. Solon
Laura A. Kenneally
Gabriel I. Opatken
NIRO, HALLER & NIRO
181 W. Madison, Suite 4600
Chicago, IL 60602
(312) 236-0733
Fax: (312) 236-3137
RNiro@nshn.com; Vitale@nshn.com;
Solon@nshn.com; LKenneally@nshn.com;
GOpatken@nshn.com

Attorneys for Plaintiffs